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Washington, DC 20536

U.S. Citizenship and Immigration Services

H9

MAR 11 2004

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Director, Nebraska Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is before the AAO on a motion to reconsider. The motion will be granted and the previous decisions of the Director and the AAO will be affirmed.

The applicant is a native and citizen of Mexico who was admitted to the United States on September 22, 1997 as a nonimmigrant. On March 2, 1999 he was ordered removed from the United States by an immigration judge under § 237(a)(1)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1227(a)(1)(C)(i) for having failed to maintain his nonimmigrant status. The applicant was removed to Mexico on April 16, 1999.

On June 27, 1999, the applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), as an alien who falsely represents himself to be a citizen of the United States for any purpose or benefit under this Act The applicant was ordered removed from the United States under § 235(b)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1225, after having been found inadmissible under section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii). The applicant seeks permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to reside with his spouse. It is noted that the record does not contain any evidence of the applicant's marriage. The record further shows that on July 2, 1998, the applicant pleaded guilty to the offense of third degree sexual assault, a Class II misdemeanor and he was sentenced to 30 days imprisonment and one year probation and a fine.

The director determined that no wavier is available for the ground of inadmissibility under section 212(a)(6)(C)(ii) of the Act and denied the application accordingly. *See Director Decision* dated February 22, 2001. The decision was affirmed by the AAO on appeal. *See AAO decision,* dated August 2, 2002.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

(i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

> (iii) Exception. – Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General has consented to the aliens' reapplying for admission.

In his motion to reconsider, counsel asserts that the Immigration and Naturalization Service (now known Citizenship and Immigration Service (CIS)) and the AAO erred in finding the applicant inadmissible under section 212(a)(6)(C)(ii) of the Act because the applicant retracted his original statement of being a U.S. citizen in a timely matter and therefore he argues that no misrepresentation was made. Counsel refers to the Foreign Affairs Manual of the State Department, 9 FAM Sec. 40.63 Note 4.6 in support of his assertion. The AAO notes that 9 FAM Sec. 40.63 Note 4.6 relates to misrepresentations under section 212(a)(6)(c)(i), not false claims to U.S. citizenship under section 212(a)(6)(c)(ii), the section under which the applicant was found inadmissible. 9 FAM Sec. 40.63 Note 11 relates to 212(a)(6)(c)(ii) and makes no reference to timely retractions. In any event, the applicant did not retract his claim until he was asked to make a sworn statement in secondary inspections. This cannot be considered timely.

The record clearly shows that the applicant represented himself to be a citizen of the United States in order to gain admission into the United States at the San Ysidro Port of Entry on June 26, 1999. In a sworn statement the applicant admitted that he falsely represented himself to be a United States citizen before an immigration officer. After questioning the applicant stated that he is a native and citizen of Mexico. The applicant is clearly inadmissible under section 212(a)(6)(C) of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (ii) FALSELY CLAIMING CITIZENSHIP-
>
> > (I) IN GENERAL- Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.
> >
> > (II) EXCEPTION- In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.
>
> (iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

Several sections of the Act were added and amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). According to the reasoning in *Matter of Soriano,* 21 I&N Dec. 516 (BIA 1996) the provisions of any legislation modifying the act must normally be applied to waiver applications adjudicated on or after the enactment date of the legislation, unless other instructions are provided. IIRIRA became effective on September 30, 1996 and applies to all false representations made on or after that date.

Matter of Martinez-Torres, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

Notwithstanding the arguments on appeal, § 212(a)(6)(C)(ii) of the Act is very specific and applicable. The applicant is subject to the provision of § 212(a)(6)(C)(ii) of the Act. No waiver of the ground of inadmissibility under section 212(a)(6)(C)(ii) of the Act is available to an alien who made a false claim to United States citizenship. Therefore, no purpose would be served in the favorable exercise of discretion in adjudicating the application in this matter. Accordingly, the motion to reconsider will be granted and the prior director and AAO decisions will be affirmed.

ORDER: The motion to reconsider is granted and the prior district director and AAO decisions are affirmed.